

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

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THE ESTATE OF JESSIE MILLER, et al

Plaintiffs,

v.

THOMAS MICHLOWSKI, et al.,

Defendants.

Case No. 10-CV-807

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**PETITION FOR  
APPROVAL OF MINOR SETTLEMENT**

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Plaintiffs, the Estate of Jesse Miller and Nakita Marie Falkenstein (a minor) and Wesley James Stewart, through their attorneys, James J. Gende II and Christopher P. Katers, Guardian Ad Litem for Nakita Marie Falkenstein, respectfully petition the Court for approval of minor settlement pursuant to Wis. Stats., §807.10, on behalf of Nakita Falkenstein. In support thereof, plaintiffs state as follows:

1. Christopher P. Katers is the court appointed Guardian ad Litem for Nakita Falkenstein.

2. On June 22, 2009, Jesse Miller committed suicide while an inmate at Columbia Correctional Institute.

3. Nakita Falkenstein (D.O.B. 8-18-96) remains a minor. She suffered the loss of consortium with her brother, Jesse Miller, as a result of his untimely death. Wesley James Stewart (D.O.B. 3-12-94) is no longer a minor, although he remains a party to this case. Wesley James Stewart will also receive \$175,000 for his portion of the loss of consortium with his brother, Jesse Miller.

4. Jesse Miller's parents' rights were terminated when Jesse Miller remained a minor. Jesse Miller had no spouse, children or will. As a result, all funds paid to the Estate will pass to his siblings pursuant to Wis. Stat., §895.04(2).

5. That Attorney Christopher P. Katers, the Guardian ad Litem, has investigated the injuries sustained by Nakita Falkenstein.

6. The State of Wisconsin agreed to pay a total of \$737,500 to the Estate of Jesse Miller to resolve all plaintiffs' claims in their entirety. The first \$175,000 of that total will be paid to Nakita Falkenstein, as set forth below.

7. The Guardian ad Litem, Christopher P. Katers, is requesting that the funds paid to Nakita Falkenstein be placed into an interest bearing, insured, and restricted account at a recognized financial institution not to be released until further order of the Court or until Nakita Falkenstein's eighteenth birthday, at which time said funds are to be released directly to Nakita Falkenstein. The Guardian ad Litem, Christopher P. Katers, will provide evidence of deposit of these funds into said account and file same with the Clerk of Courts.

8. That the Guardian ad Litem, Christopher P. Katers, is therefore requesting that the funds payable to Nakita Falkenstein be disbursed as follows:

a.	Gross Settlement	-	\$ 175,000.00
b.	Attorney's Fee (25%)	-	\$ 43,750.00
c.	Attorney's Costs	-	\$ 0.00
	(\$10,874.08 to be assessed against the Estate)		
d.	Net to Nakita Falkenstein	-	<b>\$ <u>131,250.00</u></b>
	(In interest-bearing, insured and restricted account)		

9. That the Guardian ad Litem, Christopher P. Katers, requests that the Court authorize and direct Robert Bertram, as Special Administrator of Jesse Miller's Estate, to execute all documents necessary to effectuate this settlement.

10. That in addition to the funds set forth in the Petition for Minor Settlement Approval, Nakita Falkenstein will receive an additional pro-rata share of the remaining funds to be determined by the Probate Court pursuant to Wis. Stat., §895.04(2). The Guardian Ad Litem respectfully requests that whatever additional funds Nakita Falkenstein receives via the probate

process be placed into an interest bearing, insured, and restricted account at a recognized financial institution not to be released until further order of the Court or until Nakita Falkenstein's eighteenth birthday, at which time said funds are to be released directly to Nakita Falkenstein.

WHEREFORE, Christopher P. Katers, Guardian ad Litem for Nakita Falkenstein, and James J. Gende II, one of the attorneys representing Nakita Falkenstein, ask that the Court grant the relief requested above plus any and all other relief as the Court may deem fair, just equitable and necessary.

Dated at Pewaukee, Wisconsin this 28<sup>th</sup> day of February, 2013.

**GENDE LAW OFFICE, S.C.**

Attorneys and GAL for Nakita Falkenstein (a minor)

By: s/Christopher P. Katers  
Christopher P. Katers  
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By: s/James J. Gende II  
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